

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

RONDEL DELBERT GARDNER,

Petitioner,

v.

J. SOTO, Warden

Defendant.

CASE NO. 15cv2743-WQH-DHB

ORDER

HAYES, Judge:

The matter before the Court is Petitioner's letter requesting a status update. (ECF No. 12).

BACKGROUND

On November 16, 2015, Petitioner filed for Writ of Habeas Corpus in the Central District of California. (ECF No. 1). On November 16, 2015, Petitioner filed Leave to Proceed In Forma Pauperis. (ECF No. 7). On December 7, 2015, Judge Valerie Baker Fairbank transferred Petitioner's Writ of Habeas Corpus from the Central District of California to this Court in the Southern District of California. (ECF No. 4). This Court accepted the case and assigned it case number 15cv2743.

On December 10, 2015, this Court issued an order denying Petitioner's Motion to Proceed In Forma Pauperis (ECF No. 7) for failing to provide the Court with sufficient information to determine Petitioner's financial status. (ECF No. 8). This Court stated,

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1 A request to proceed in forma pauperis made by a state prisoner must
 2 include a certificate from the warden or other appropriate officer showing
 3 the amount of money or securities Petitioner has on account in the
 4 institution. Rule 3(a)(2), 28 U.S.C. foll. § 2254; Local Rule 3.2.
 Petitioner has failed to provide the Court with the required Prison
 Certificate.

5 Because this Court cannot proceed until Petitioner has either paid the
 6 \$5.00 filing fee or qualified to proceed in forma pauperis, the Court
 7 DISMISSES the case without prejudice. See Rule 3(a), 28 U.S.C. foll. §
 8 2254. If Petitioner wishes to proceed with this case, he must submit, **no**
 later than **February 8, 2016**, a copy of this Order with the \$5.00 fee or
 with adequate proof of his inability to pay the fee.

9 *Id.* at 1-2. This Court also dismissed Petitioner's Complaint without prejudice because
 10 Petitioner had failed to allege exhaustion of state judicial remedies in his Complaint.
 11 This Court stated,

12
 13 [H]abeas petitioners who wish to challenge either their state court
 14 conviction or the length of their confinement in state prison, must first
 15 exhaust state judicial remedies. 28 U.S.C. § 2254(b), (c); Granberry v.
 16 Greer, 481 U.S. 129, 133-34 (1987). To exhaust state judicial remedies,
 17 a California state prisoner must present the California Supreme Court with
 18 a fair opportunity to rule on the merits of every issue raised in his or her
 federal habeas petition. 28 U.S.C. § 2254(b), (c); Granberry, 481 U.S. at
 133-34. Moreover, to properly exhaust state court remedies a petitioner
 must allege, in state court, how one or more of his or her federal rights
 have been violated

19 (ECF No. 8 at 2). This Court ordered,

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 21 To have this case reopened, Petitioner must, no later than **February 8,**
 22 **2016**, pay the \$5.00 filing fee or submit adequate proof of his inability to
 23 pay the fee, **and** file a First Amended Petition that cures the pleading
 24 deficiencies set forth above. The Clerk of Court shall send Petitioner a
 25 blank Southern District of California First Amended Petition form and a
 blank Southern District of California Motion to Proceed In Forma
 Pauperis form along with this Order.

26 *Id.* at 4.

27 On March 1, 2016, Petitioner sent a motion to this Court requesting legal
 28 assistance and change of venue. (ECF No. 10). On March 17, 2016, the Court ordered:

1 IT IS HEREBY ORDERED that Petitioner's Request for legal assistance
 2 and change of venue (ECF No. 10) is denied at this stage in the
 3 proceedings. Petitioner's action was dismissed without prejudice because
 4 Petitioner failed to satisfy the filing fee requirement and failed to allege
 5 exhaustion of state judicial remedies. To have this case reopened,
 6 Petitioner must, no later than **May 16, 2016**, pay the \$5.00 filing fee or
 7 submit adequate proof of his inability to pay the fee, **and** file a First
 8 Amended Petition that cures the pleading deficiencies set forth above.

9 (ECF No. 11 at 3).


10 On July 1, 2016, Petitioner sent a letter to this Court requesting a status update.
 11 (ECF No. 12). In this letter Petitioner stated that he had not received any updates from
 12 the Court since the case was transferred to the Southern District of California.
 13 Petitioner inquires whether he "should submit another habeas corpus" petition.

14 Conclusion

15 IT IS HEREBY ORDERED that, to have the case reopened, Petitioner must, no
 16 later than **September 19, 2016**, pay the \$5.00 filing fee or submit adequate proof of his
 17 inability to pay the fee by filing the In Forma Pauperis form, **and** file a First Amended
 18 Petition that cures the pleading deficiencies set forth in the Court's December 10, 2015
 19 Order (ECF No. 8).

20 IT IS FURTHER ORDERED that the Clerk of Court shall send Petitioner a
 21 blank Southern District of California First Amended Petition form and a blank
 22 Southern District of California Motion to Proceed In Forma Pauperis form along with
 23 this Order, the Order from December 10, 2015 (ECF No. 8), and the Order from March
 24 17, 2016 (ECF No. 11).

25 DATED: 7/17/16

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 27 WILLIAM Q. HAYES
 28 United States District Judge